Response to Arguments

1. Applicant's arguments of 06/09/2008 with respect to claims 1-9 and Claim 49 have been considered below.

As to Claims 7-9, the previous 35 U.S.C. §101 rejection is hereby withdrawn in view of amendment.

Applicant argues that there would be no motivation to combine the prior art as the art is distinctly different and non-analagous prior art.

In response to applicant's argument that the Gemmy Allen reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Gemmy Allen reference is reasonably pertinent in that it discusses marketing intermediaries and how they increase efficiency in making products, i.e. media blocks, available to target markets and offers examples of how intermediaries can act in business negotiations.

In response to applicant's argument that Forsythe et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Forsythe et al is reasonably pertinent in that it teaches an advertising agency, an intermediary, contacting a media outlet [media provider] to request rates with schedules for one or more particular media advertising choices

(newspaper, outdoor, TV, etc.) so as to offer such choices to the advertising agency's customers, namely advertisers where a newspaper is a manufacturable, tangible product incorporating advertising.

Applicant's request for allowance and withdraw of the most previous Office Action have been carefully considered. Applicant's arguments are not persuasive and the current Office Action, which follows, is made FINAL.

DETAILED ACTION

2 This Office Action is in response to the application filed originally on 03/11/2004.

CLAIM STATUS

3. Claims 1-9 and Claim 49 are currently pending in the instant application and have been examined. Applicant elected *without traverse* Claims 1-9 and Claim 49 in response to a restriction requirement. The Restriction Requirement is hereby made FINAL.

Claim Rejections - 35 USC § 103

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-8 and claim 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmy Allen, Marketing, Chapter 7, Place, 1999, See Hyperbook, http://ollie.dcccd.edu/MRKT2370/book/mrktbook.htm in view of Forsythe et al, WO 02/19058 A2.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmy Allen, Marketing, Chapter 7, Place, 1999, See Hyperbook, http://ollie.dcccd.edu/MRKT2370/book/mrktbook.htm in view of Forsythe et al, WO 02/19058 A2, in further view of Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994.

CLAIM 1: As per Claim 1, Allen teaches a method for providing discounted media placement to a plurality of advertisers, the method comprising acts of:

acting as an intermediary between a media provider and the plurality of

advertisers; "A producer **(advertiser)** will use an **intermediary** when it believes that the intermediary can perform the function(s) more economically and efficiently than it can." Allen, pg 1, par. 4, "**Intermediaries** are organizations operating in the middle or between the producer **(advertiser)** and the final buyer. They link producers to other intermediaries or to the ultimate users of the product. Traditionally, intermediaries have been referred to as middlement." Allen, pg 1, par 2 receiving a large block of media (buy in large quantities) at a volume-discounted price from a media provider "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities **(block of media)** and sell in smaller quantities" Allen, pg 2, par 2 See also Allen pg 7, par 5 discount.; dividing the large block of media into a plurality of smaller media blocks; "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities **(plurality of smaller media blocks)**" Allen, pg 2, par 2. providing a first smaller media block to a first advertiser at a first volume-discounted price; "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers and purchases **sizable** quantities from the manufacturer at a discount." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer **(advertiser)** to share in a **discount** for quantity purchases" Allen, pg 7, par 5. and providing a second smaller media block to a second advertiser at a second volume-discounted price, whereby through receiving and dividing the large block of media into a plurality of smaller media blocks, the plurality of advertisers receive media placement at a volume-discounted price. "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy **(large block of media)** in large quantities and sell **(smaller block of**

media) in smaller quantities" Allen, pg 2, par 2. "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers **(advertisers)** and purchases sizable quantities from the manufacturer **(media provider)** at a **discount**." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer **(advertiser)** to share in a **discount** for quantity purchases" Allen, pg 7, par 5.

Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

However, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 par 1 "When an advertising agency is involved in the traditional media-buying process, the advertising agency **(intermediary)** contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.

The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a

broker/fax service between **agency buyers** and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is **negotiated** and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at **discounted rates**."

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

CLAIM 2: As per Claim 2, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth in Claim l above, wherein the act of receiving a large block of media at a volume-discounted price from a media provider, the large block of media is received in a form selected from a group consisting of radio, television, a tradeshow, a billboard, Intemet, a sponsorship advertisement, television placement, a print advertisement, and an Internet keyword. "Intermediaries are organizations operating in the middle or between the **producer (producer of radio, television, tradeshow, billboard, internet, sponsorship advertisement, television placement, a print advertisement or internet keyword media)** and the final buyer. They link producers to other intermediaries or to the ultimate users of the product **(block of media in the form of radio, television, a tradeshow, a billboard, Internet, a**

sponsorship advertisement, television placement, print advertisement, or Internet keyword). Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy by gathering products from several manufacturers to offer a broad assortment to consumers. By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

Allen does not explicitly teach purchasing of blocks of media including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement, or an internet keyword.

However, Forsythe et al teaches purchasing of blocks of media including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement, or an internet keyword. See Forsythe et al page 2, paragraph 1 (…"newspaper, outdoor, TV, cable, radio or any combination of these"…).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising

spots including radio, television, a tradeshow, a billboard, Internet, a sponsorship advertisement, television placement, a print advertisement or an internet keyword, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

CLAIM 3: As per Claim 3, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 2, wherein the act of acting as an intermediary between a media provider and the plurality of advertisers, further comprises an act of negotiating directly with the media provider for a discounted price based on volume. "Because they can consolidate orders, they may also be able to **negotiate** better prices than individual consumers could." Allen, pg 2, par 2

CLAIM 4: As per Claim 4, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 3, wherein the act of dividing the large block of media into a plurality of smaller media blocks further comprises acts of: breaking up the large media block into the plurality of smaller media
blocks, where each of the plurality of smaller media blocks is a participation
opportunity; and offering the participation opportunity to an advertiser. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell

in smaller quantities **(breaking up the large media block into smaller media blocks (participation opportunity))**. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy by gathering products from several manufacturers to **offer** a broad assortment to consumers **(advertiser)**. By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

CLAIM 5: As per Claim 5, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 1, wherein the act of acting as an intermediary between a media provider and the plurality of advertisers, further comprises an act of negotiating directly with the media provider for a discounted price based on volume. "Because they can consolidate orders, they may also be able to **negotiate** better prices than individual consumers could." Allen, pg 2, par 2

CLAIM 6: As per Claim 6, Allen teaches a method for providing discounted media placement to a plurality of advertisers as set forth above in Claim 1, wherein the act of dividing the large block of media into a plurality of smaller media blocks further comprises acts of: breaking up the large media block into the plurality of smaller media

blocks, where each of the plurality of smaller media blocks is a participation opportunity; and offering the participation opportunity to an advertiser. Traditionally, intermediaries have been referred to as middlement." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities **(breaking up the large media block into smaller media blocks (participation opportunity))**. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy by gathering products from several manufacturers to **offer** a broad assortment to consumers **(advertiser)**. By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to negotiate better prices than individual consumers could." Allen pg 2 par 2.

CLAIM 7: As per Claim 7, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry, the method comprising acts of
selecting a specific industry; developing a media plan for a plurality of advertisers in the specific industry; negotiating directly with a media provider for a discounted price on a large block of media based on volume; dividing the large block of media into a plurality of smaller blocks, where each smaller block of media is a participation opportunity; and selling the participation opportunity to an advertiser, whereby through negotiating for and dividing the large block of

media into a plurality of smaller blocks, an advertiser purchasing a participation opportunity receives media placement at a volume-discounted price. "Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including **negotiation**, title, payment, risk taking and financing). A producer will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. **The information function involves gathering and distributing marketing research (selecting a specific industry) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry).** Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves **the negotiations** for reaching an agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs." Allen pg 1 par 4. "Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities **(breaking up the large media block into smaller media blocks (participation opportunity))**. They help to smooth the distribution path for goods by creating utility, performing marketing functions and cutting costs. Producers do not have to deal directly with a large number of end-users. Instead, marketing intermediaries handle

the tasks involved. They are often specialists in certain functions and can perform these activities then producers can. Consumers need an assortment of products and intermediaries resolve this assortment discrepancy by gathering products from several manufacturers **(media provider)** to **offer** a broad assortment to consumers **(advertiser)**. By representing numerous producers, marketing intermediaries cut the costs of buying and selling. Because they can consolidate orders, they may also be able to **negotiate better prices** than individual consumers **(advertiser)** could." Allen pg 2 par 2.

Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

However, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 "When an advertising agency is involved in the traditional media-buying process, the advertising agency **(intermediary)** contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.

The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a **broker**/fax service between **agency buyers** and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is **negotiated** and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at **discounted rates**."

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount.

CLAIM 8: As per Claim 8, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry as set forth above in Claim 7, further comprising an act of selecting the specific industry from a group consisting of a financial services industry, automotive industry, computer industry, real estate industry, and transportation industry. "Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including **negotiation**, title, payment, risk taking and financing). A producer will use an intermediary when it believes that the intermediary can

perform the function(s) more economically and efficiently than it can. **The information function involves gathering and distributing marketing research (selecting a specific industry including financial services industry, automotive industry, computer industry, real estate industry, and transportation industry) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry).** Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves **the negotiations** for reaching an agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs." Allen pg 1 par 4

Allen does not explicitly teach the act of researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry.

However Forsythe et al teaches the act of researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry. See Forsythe et al, Page 7, par 3, Page 6 par 5, and Figs 1 and 8A-D, particularly Fig 8A Automotive, Banking/Financial, ECommerce, Home Improvement, Other.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary

(advertising agency) researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry, **thereby** making advertisers, manufacturers, or retailers, in specific markets, more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount in these specific industries .

CLAIM 9: As per Claim 9, Allen teaches a method for providing discounted marketing services to an advertiser in a specific industry as set forth above in Claim 8, further comprising an act of selecting credit unions as an industry segment within the financial services industry. "Intermediaries smooth the flows of products to buyers by performing the key functions of informing, promoting, and physical possession (including **negotiation**, title, payment, risk taking and financing). A producer will use an intermediary when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. **The information function involves gathering and distributing marketing research (selecting a specific industry including financial services industry, of which credit unions is an industry segment) and intelligence about the environment for planning purposes (developing a media plan for a plurality of advertisers in the specific industry including financial services industry, of which credit unions is an industry segment).** Scanner technology provides a great amount of information. The promotion function involves developing and spreading persuasive communications about an offer. The physical possession function consists of the transporting and storing of products. This activity involves **the negotiations** for reaching an

agreement on price and other terms. The title is the actual transfer of ownership from one organization or person to another. The payment involves buyers paying their bills. The risk taking function assumes the risk of carrying the product and receiving payment. The financing function involves acquiring and using funds to cover costs." Allen pg 1 par 4.

Allen does not explicitly teach developing a media plan for credit unions as an industry segment within the financial services industry.

Forsythe et al teaches the act of researching a market in a specific market including financial services industry.

Forsythe et al does not teach developing a media plan for credit unions as an industry segment within the financial services industry.

However, Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994 does teach developing a media plan for credit unions as an industry segment within the financial services industry. "In the past five years, Georgia Federal Credit Union, Clarkston, GA., has grown significantly in assets-- from $60million to $130million-- and in marketing staff--from one person to three. Five years ago, because one person couldn't do it all (negotiate, research, **develop media plan**) Georgia Federal **(a credit union**) hired an advertising agency **(intermediary**) to assist it." Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994, Paragraph 2 of Text: Section (best available copy provided) "Many credit union executives don't realize that ad agencies do much more than create ads. They offer expertise in several areas: copywriting, organizing promotional campaigns **(develop media plan)**, graphic design, and

research **(develop media plan)**. Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994, Paragraph 4 of Text: Section (best available copy provided).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding an intermediary (advertising agency) researching a market in a specific market including financial services industry, automotive industry, computer industry, real estate industry or transportation industry, and to further incorporate the teachings of Wall, Kim T., "CUNA Marketing Council: how to work with an ad agency" (advertising; Credit Union National Association) Credit Union Executive, July, 1994 regarding developing a media plan for credit unions as a segment within the financial services industry **thereby** making advertisers, manufacturers, or retailers, in specific markets, and in segments of the financial industry such as credit unions, more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan, and offer such advertisers, manufacturers or retailers such media blocks at a discount in these specific industries .

CLAIM 49: As per Claim 49, Allen teaches A method for providing discounted media placement to a plurality of advertisers, the method comprising acts of: acting as an intermediary between a media provider and the plurality of advertisers; receiving a large block of media at a volume-discounted price from a media provider; dividing the large block of media into a plurality of smaller media blocks; providing the plurality of smaller media blocks to a plurality of advertisers at volume-discounted prices, whereby through receiving and dividing the large

block of media into a plurality of smaller media blocks, the plurality of advertisers are able to receive media placement at a volume-discounted price. "A producer **(media provider)** will use an **intermediary** when it believes that the intermediary can perform the function(s) more economically and efficiently than it can. Allen, pg 1, par. 4, "**Intermediaries** are organizations operating in the middle or between the producer **(media provider)** and the final buyer **(advertiser)**. They link producers to other intermediaries or to the ultimate users of the product. Traditionally, intermediaries have been referred to as middlemen." Allen, pg 1, par 2 receiving a large block of media at a volume-discounted price from a media provider "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities **(block of media)** and sell in smaller quantities" Allen, pg 2, par 2.; dividing the large block of media into a plurality of smaller media blocks; "Intermediaries reduce this quantity discrepancy by matching supply and demand. They buy in large quantities and sell in smaller quantities **(plurality of smaller media blocks)**" Allen, pg 2, par 2. providing a first smaller media block to a first advertiser at a first volume-discounted price; "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers and purchases **sizable** quantities from the manufacturer at a discount." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer **(advertiser)** to share in a discount for quantity purchases" Allen, pg 7, par 5. and providing a second smaller media block to a second advertiser at a second volume-discounted price, whereby through receiving and dividing the large block of media into a plurality of smaller media blocks, the plurality of advertisers receive media placement at a volume-discounted price. "Intermediaries reduce this quantity discrepancy by matching supply

and demand. They buy **(large block of media)** in large quantities and sell **(smaller block of media)** in smaller quantities" Allen, pg 2, par 2. "A drop-shipper or direct-mill shipper is a wholesaler who accumulates orders from retailers **(advertisers)** and purchases sizable quantities from the manufacturer at a **discount**." Allen, pg 7, par 5 "Through the elimination of the warehousing, inventory, and shipping functions, the firm provides merchandise to the retailer at a reduced cost. It also permits the retailer **(advertiser)** to share in a **discount** for quantity purchases" Allen, pg 7, par 5.

Allen does not teach the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots.

However, Forsythe et al, teaches the concept of an intermediary (advertising agency) between an advertiser or group of advertisers, making wholesale purchases of advertising spots. See Forsythe et al, page 2 par 1 "When an advertising agency is involved in the traditional media-buying process, the advertising agency **(intermediary)** contacts the media outlet to request rate(s) or rate(s) with schedule(s) for one or more particular media advertising choices (newspaper, outdoor, TV, cable, radio or any combination of these). The selected media outlet send the rate(s) or rate(s) with schedule(s) to the advertising agency which then **negotiates with the media outlet for better rate(s)**. The advertising agency sends a second request, based on the new negotiated rate(s), to the media outlet which then sends adjusted rate(s) and schedule(s), based on the new (second) request, back to the advertising agency. After the advertising agency receives the adjusted rate(s) and schedule(s) from the media outlet and gets its client's approval, the advertisement(s) is placed with the media outlet by the advertising agency.

The wholesale purchase of advertising spots is taught by Forsythe et al, page 3, paragraphs 1-3, specifically paragraph 3 "Another web-based company, BuyMedia.com, serves primarily as a **broker**/fax service between **agency buyers** and broadcast media outlets. This site provides open-ended transactions between buyers and sellers in which a broadcast media purchase is **negotiated** and finalized between buyers and the sellers. BroadcastSpots.com is an online media service that offers unsold broadcast inventory to media buyers at **discounted rates**."

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for Allen to incorporate the teachings of Forsythe et al regarding the concept of an intermediary acting between an advertiser or group of advertisers making wholesale purchases of advertising spots, **thereby** making individual advertisers, manufacturers, or retailers more efficient and more cost-effective by using intermediaries such as advertising agencies to make wholesale purchases of media blocks, which would negotiate, plan and offer such advertisers, manufacturers or retailers such media blocks at a discount.

Conclusion

#. **THIS ACTION IS MADE FINAL** See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed,

and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Duplicate Claims Warning:

Applicant is advised that should claim 1 be found allowable, claim 49 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 49 be found allowable, claim 1 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fenti et al, US 20070083434 A1 discloses a “System and Method for Brokering the sale of Advertising.”

Sugiyai, US 20020095349 A1 discloses a "Net market system"

Adacjo, US 20010027432 A1 discloses a "Method of establishing a system of a secondary market for disbursement information."

Son, US 20010027412 A1 discloses a "Method and apparatus for providing advertisements."

Mikurak, US 20060178918 A1, discloses a "Technology Sharing during demand and supply planning in a network-based supply chain environment."

Kar, US 20030083949 A1, discloses a "System and Method for facilitating consignment and sales of inventory or services."

Kar, US 7269571 B2, discloses a "System and Method for Facilitating Consignment and sales of inventory or services."

Khoo et al, US 7124091 B1, discloses a "Method and System for Ordering an Advertising Spot over a Data Network."

Altberg et al., US 20070162296 A1, discloses "Methods and apparatuses for Audio advertisements."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL R. STIBLEY whose telephone number is (571) 270-3612. The examiner can normally be reached on Monday-Friday 9 a.m.-5 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES W. MYHRE can be reached on (571) 272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MICHAEL R. STIBLEY/
Examiner, Art Unit 3688
Tuesday, October 21, 2008

/Jean Janvier/
Primary Examiner, Art Unit 3688